

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

OSCAR RODRIGUEZ

Claim No. CU - 8236

Decision No. CU - 6839

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Carlos Bauza, Esq.
Elias E. Segarra, Esq.

Petition to reopen; Order of Dismissal dated and entered August 19, 1970.

FINAL DECISION

This claim against the Government of Cuba, opened by the Commission on behalf of the then absent claimant, has been dismissed by Order of the Commission No. CU-732 dated August 19, 1970, for the reason that claimant, upon his return from Cuba to the United States failed to prosecute the claim.

Subsequently, claimant requested that the claim be reopened and submitted supporting evidence, including documentation showing that he has been a United States national since birth. In the claims application, claimant stated that his losses amounted to \$86,000.00 and that they were based on real and personal property located in Havana. Additionally claimant stated that he claims for good will of a business partnership \$90,000.00.

Counsel for claimant thereafter clarified that the claim does not include any loss for land or buildings, but only losses for furniture and household goods, as well as claimant's interest in a partnership engaged in the operation of two photographic studios, including an ownership interest in the premises of one of the studios.

Upon due consideration, claimant's request for the reopening of the claim is granted, the Order of Dismissal is set aside and this decision will be entered.

Furniture and household goods

The evidence shows that claimant owned at his residence located at No. 1256 Calzada del Cerro in Havana furniture, electric appliances, household goods, cameras, and other property, acquired prior to his marriage in 1967 to Juana Dora Prado Cardoso.

The Cuban Government published in its Official Gazette of December 6, 1961, Law 989 which effectively confiscated all assets, real and personal property, rights, shares of stock, bonds and other property of persons who left Cuba. The Commission, therefore, finds that claimant's property was taken by the Government of Cuba on April 22, 1970, the date of his departure from Cuba for the United States (see Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

Whereas it appears that claimant's loss did not occur until 1970, subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period (see Claim of Vivian Lopez Morales, Claim No. CU-8739).

Claimant estimated that the personal property at his home was worth \$19,114.00, but he admits that he owned this property long before his second marriage in 1967. The Commission, therefore, finds that from \$19,114.00 fifty percent must be deducted for depreciation due to wear and tear of the individual property items, resulting in a net worth of that property at the time of loss in the amount of \$9,557.00.

Photographic Studios

Claimant states that he had a 50% partnership interest in a Photo Studio "Apolo" located at No. 466 Calzada de 10 de Octubre, and in a Photo Studio "Modelo" located at No. 355 Calzada del Monte in Havana. He further states that the remaining 50 percent interest was owned by his father

Angel Rodriguez Largel. Claimant gave a description of the property of the two studios and estimated their value in the amount of \$69,705.00.

The record shows that the studios were established in 1923 and 1935, respectively, and that claimant's father died intestate on April 16, 1968, survived by three children. The Commission finds, that under Cuban laws of intestacy each child, including claimant, inherited a one-third interest in the estate of their widowed father.

For the reasons already stated the Commission further finds that any interest claimant may have had in the studios, was taken by the Government of Cuba on April 22, 1970.

No evidence has been submitted to show that claimant had, in fact, a partnership interest in the studios, other than claimant's own statement. The circumstances surrounding this matter indicate that claimant's father was the sole owner of the studios; that claimant operated the studios together with his father who at the time of his death was about 80 years of age; and no formal partnership agreement is shown between father and son.

In view of the foregoing the Commission concludes that at the time of the loss claimant owned only a one-third share in the studios which he inherited from his father.

The value of the studios remains to be determined. The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

No financial statements were submitted to show the assets and liabilities of the studios. However, claimant described and evaluated the assets individually, and the Commission finds that claimant owned in his own right the business place (storefront) at No. 466 Calzada de 10 de Octubre, which was assigned to the claimant by the Superior Council of Urban Reform of Cuba, and that such business place had a value of \$5,000.00.

The remaining assets were evaluated by the claimant in the amount of \$64,705.00, but the Commission finds that here again fifty percent of this amount must be deducted for depreciation from the date of acquisition to the date of loss, resulting in a net worth of the assets, formerly owned by claimant's father, of \$32,352.50. Absent any evidence of liabilities, the Commission concludes that claimant's one-third inherited interest in this property was worth \$10,784.16.

A claim for good will in the amount of \$90,000.00 is not substantiated by any evidence whatsoever and cannot be considered here.

Summarizing claimant suffered the following losses:

For furniture and household goods	\$ 9,557.00
For the premises at No. 466 Calzada de 10 de Octubre	5,000.00
For his inherited 1/3rd share in the studios	<u>10,784.16</u>
Total	\$25,341.16

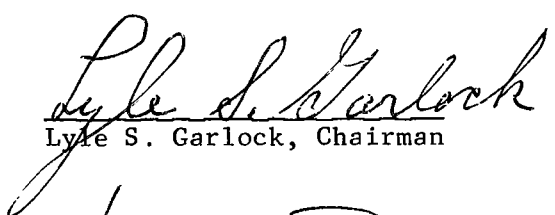
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of the loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

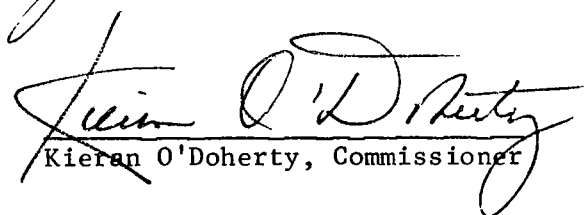
CERTIFICATION OF LOSS

The Commission certifies that OSCAR RODRIGUEZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Five Thousand Three Hundred Forty-One Dollars and Sixteen Cents (\$25,341.16) with interest thereon at 6% per annum from April 22, 1970, the date of loss, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.